IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6550 OF 2005

Vijay B. Saundatti ...Petitioner.

Versus

Bapusaheb M. Patil & Anr. ...Respondents.

Shri A.B.Borkar for the Petitioner.
Shri S.M.Oak for Respondent No.1.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 30th JANUARY, 2006.

P.C. :

1. Heard Shri Borkar - learned Counsel appearing for the petitioner-original defendant No.1 and Shri Oak - learned Counsel appearing for respondent No.1-original plaintiff. Respondent No.2 is served.

The Petition can be, therefore, disposed of.

2. It is not disputed before me that the petitioner is defendant No.1 in Regular Civil Suit No.733 of 2002, which is instituted by respondent No.1, for a decree for partition and separate possession of his 1/3rd share. During pendency of the Suit, in the Written Statement which is filed by the petitioner herein, all contentions and averments in the plaint have been denied and on the other hand it is asserted that the

first-respondent cannot assert his claim of ownership insofar as his share is concerned, on account of the events which have been specifically set-out and mentioned in the Written Statement.

3. After the Suit was filed, the first respondent as well as the petitioner produced documents. The petitioner has produced documents, list of which is given at Page-36 (Exh.C). This list is numbered as Exh.23. The petitioner vide an application preferred on 14th September, 2005 pointed out that he has produced Xerox copies of above twenty documents. A notice was issued on 9th June, 2002 by him to the first respondent-orig.plaintiff to produce the originals, which are in his possession, according to the petitioner. The petitioner has also pointed out that the original of one more letter dated 8th July, 2002 is also in possession of the first respondent-orig.plaintiff. Similarly, he has also referred a letter dated 28th July, 2002, the Xerox copy of which has been produced by him. According to the petitioner these documents are relevant for the purposes of adjudicating the controversy as also cross-examination of the original plaintiff. Hence, the originals be directed to be produced by the first respondent-orig.plaintiff.

4. The first respondent-orig..plaintiff has filed reply to this application and apart from raising the issue of its maintainability, specifically urged that the originals mentioned in the application are not in his possession.

5. The application of the petitioner is rejected by the impugned order and hence the present Petition.

6. In my view, normally, the Court would not interfere in such interlocutory orders. However, in the present case interference is necessary to smoothen the process and to avoid multiplicity of proceedings at a later stage. This is a case, where in the interest of justice, the trial Court should have, in the light of clear assertion by the first respondent-orig.plaintiff, allowed the petitioner-orig.defendant No.1 to proceed with the trial on the basis of the Xerox copies. The Xerox copies should have been exhibited in the absence of the originals, not being produced by the first respondent-orig.plaintiff.

7. Shri Oak states that this Court should pass appropriate orders considering the reply of the first respondent-orig.plaintiff.

8. In the larger interest of justice, the order passed by the trial Court is set-aside. The documents which are mentioned in the list at Exh.23 i.e. Xerox copies of the correspondences from Item Nos.1 to 20 be exhibited, in the event the same or such of them are tendered during the cross-examination of the first respondent-orig.plaintiff by the petitioner's Advocate. Further, the apprehension of the first respondent-orig.plaintiff that the matter would be delayed as such applications are made with that purpose need not detain me because the suit is of the year, 2002 and it would be advisable for the trial Court to take-up the same and decide expeditiously. The parties to appear before the trial Court for cross-examination of the first respondent-Orig.plaintiff on Monday, 13th February, 2006; and the trial Court is directed to proceed with the case expeditiously.

(S.C.DHARMADHIKARI,J.)